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EASTERN DISTRICT OF CALIF.
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23 IN THE UNITED STATES DISTRICT COURT
24 FOR THE EASTERN DISTRICT OF CALIFORNIA

25 UNITED STATES OF AMERICA,

26 Plaintiff,

27 v.

28 SOUTHERN CALIFORNIA EDISON
COMPANY,

Defendant.

Civil Action No. F. 98-5595 AWI SMS

CONSENT DECREE

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1 UNITED STATES OF AMERICA,

2 Plaintiff,

3 v.

4 SOUTHERN CALIFORNIA EDISON
5 COMPANY,

6 Defendant.

Civil Action No. F. 98-5595 AWI SMS

CONSENT DECREE

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I. BACKGROUND

A. The United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), filed a complaint in this matter pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9607, as amended ("CERCLA"), seeking reimbursement of response costs incurred and to be incurred for response actions taken at or in connection with the release or threatened release of hazardous substances at the Southern California Edison Visalia Poleyard Site in Visalia, Tulare County, California ("the Site").

B. The defendant that has entered into this Consent Decree ("Settling Defendant") does not admit any liability to Plaintiff arising out of the transactions or occurrences alleged in the complaint.

C. The United States and Settling Defendant agree, and this Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith, that settlement of this matter will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

THEREFORE, with the consent of the Parties to this Decree, it is ORDERED, ADJUDGED, AND DECREED:

II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345 and 42 U.S.C. §§ 9607 and 9613(b) and also has personal jurisdiction over Settling Defendant. Settling Defendant consents to and shall not challenge entry of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

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1 direct and indirect costs, that the United States pays at or in connection with this Site after
2 February 28, 1998. The categories of such costs shall include, but not be limited to, costs of
3 amending the ROD (in the event that the ROD is amended), costs of reviewing or developing
4 plans, reports and other items in connection with the Site, costs of overseeing remedial design
5 or remedial actions, or otherwise implementing, overseeing, or enforcing this Consent Decree.
6 The types of such costs shall include but not be limited to payroll costs, contractor costs, travel
7 costs, laboratory costs, costs of attorney time, and indirect costs.
8

9 h. "Interest" shall mean interest at the current rate specified for interest on
10 investments of the Hazardous Substance Superfund established by 26 U.S.C. § 9507,
11 compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a).
12

13 i. "National Contingency Plan" or "NCP" shall mean the National Oil and
14 Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of
15 CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, including but not limited to any
16 amendments thereto.
17

18 j. "Paragraph" shall mean a portion of this Consent Decree identified by an
19 Arabic numeral or an upper or lower case letter.

20 k. "Parties" shall mean the United States and the Settling Defendant.

21 l. "Past Response Costs" shall mean all costs, including but not limited to direct
22 and indirect costs, that the United States has paid at or in connection with the Site through
23 February 28, 1998, plus accrued Interest on all such costs through the date of lodging of this
24 Consent Decree with the Court.
25

26 m. "Record of Decision" or "ROD" shall mean the EPA Record of Decision
27 relating to the Site signed on June 10, 1994 by the Deputy Regional Administrator, EPA, and
28

1 all attachments thereto.

2 n. "Plaintiff" shall mean the United States.

3 o. "Section" shall mean a portion of this Consent Decree identified by a Roman
4 numeral.

5 p. "Settling Defendant" shall mean Southern California Edison Company.

6 q. "Site" shall mean the Southern California Edison Visalia Poleyard Superfund
7 site, encompassing approximately 19 acres, located at 432 Ben Maddox Way, at the
8 intersection of Ben Maddox Way and West Goshen Avenue, in Visalia, California in Visalia,
9 Tulare County, California, and any areas where hazardous substances, pollutants or
10 contaminants therefrom have come to be located. The Site is described in greater detail in the
11 ROD.
12
13

14 r. "State" shall mean the State of California.

15 s. "United States" shall mean the United States of America, including its
16 departments, agencies and instrumentalities.
17

18 **V. REIMBURSEMENT OF RESPONSE COSTS**

19 **4. Payment of Past Response Costs to the EPA Hazardous Substance Superfund.**

20 Within 30 days of the Effective Date of this Consent Decree, Settling Defendant shall pay to
21 the EPA Hazardous Substance Superfund (1) \$264,000 in reimbursement of Past Response
22 Costs, and (2) Interest from the date of lodging of this Consent Decree through the date of
23 payment. Payment shall be made by FedWire Electronic Funds Transfer ("EFT") to the U.S.
24 Department of Justice account in accordance with current EFT procedures, referencing USAO
25 File Number 1998V00437, the EPA Region and Site ID Number 09-D7, and DOJ Case
26 Number 90-11-3-06062. Payment shall be made in accordance with instructions provided to
27
28

1 Settling Defendant by the Financial Litigation Unit of the U.S. Attorney's Office in the Eastern
2 District of California following lodging of the Consent Decree. Any payments received by the
3 Department of Justice after 4:00 p.m. Eastern Time shall be credited on the next business day.
4
5 Settling Defendant shall send notice to the United States that payment has been made in
6 accordance with Section XIV (Notices and Submissions).

7 5. Payment of Future Response Costs to the EPA Hazardous Substance Superfund.

8 a. Payment. Settling Defendant shall reimburse the EPA Hazardous Substance
9 Superfund for all Future Response Costs not inconsistent with the National Contingency Plan.
10
11 The United States will periodically send Settling Defendant a bill requiring payment that
12 includes a cost summary of direct and indirect costs incurred by EPA and its contractors in the
13 Superfund Cost Organization and Recovery Enhancement System ("SCORES") format or a
14 substantially equivalent format, and a summary of direct and indirect costs incurred by DOJ
15 and its contractors. Settling Defendant shall make all payments within 30 days of Settling
16 Defendant's receipt of each bill requiring payment, except as otherwise provided in Paragraph
17 5(b). All payments under this Paragraph shall be made by certified or cashier's check made
18 payable to "EPA Hazardous Substance Superfund" and shall be sent to:

19
20 U.S. EPA
21 Region IX
22 Attn: Superfund Accounting
23 P. O. Box 360863M
Pittsburgh, PA 15251.

24 All payments shall reference the name and address of the Party making payment, the EPA
25 Region and Site ID Number 09-D7 and DOJ Case Number 90-11-3-06062. Copies of each
26 check paid pursuant to this Paragraph, and any accompanying transmittal letter, shall be sent to
27 the United States as provided in Section XIV (Notices and Submissions). Any payments
28

1 received after 4:00 p.m. Eastern Time shall be credited on the next business day.

2 b. Settling Defendant may contest payment of any Future Response Costs under
3 Paragraph 5(a) only if it determines that the United States has made an accounting error or if it
4 alleges that a cost item that is included represents costs that are inconsistent with the NCP.
5 Such objection shall be made in writing within 30 days of receipt of the bill and must be sent to
6 the United States pursuant to Section XIV (Notices and Submissions). Any such objection
7 shall specifically identify the contested Future Response Costs and the basis for objection. In
8 the event of an objection, the Settling Defendant shall within the 30 day period pay all
9 uncontested Future Response Costs to the United States in the manner described in Paragraph
10 5(a). Simultaneously, the Settling Defendant shall establish an interest-bearing escrow account
11 in a federally-insured bank duly chartered in the State of California and remit to that escrow
12 account funds equivalent to the amount of the contested Future Response Costs. The Settling
13 Defendant shall send to the United States, as provided in Section XIV (Notices and
14 Submissions), a copy of the transmittal letter and check paying the uncontested Future
15 Response Costs, and a copy of the correspondence that establishes and funds the escrow
16 account, including, but not limited to, information containing the identity of the bank and bank
17 account under which the escrow account is established as well as a bank statement showing the
18 initial balance of the escrow account. Simultaneously with establishment of the escrow
19 account, the Settling Defendant shall initiate the Dispute Resolution procedures in Section VI
20 (Dispute Resolution). If the United States prevails in the dispute, within 5 days of the
21 resolution of the dispute, the Settling Defendant shall pay the sums due (with accrued Interest)
22 to the United States in the manner described in Paragraph 5(a). If the Settling Defendant
23 prevails concerning any aspect of the contested costs, the Settling Defendant shall pay that

1 portion of the costs (plus associated accrued Interest) for which it did not prevail to the United
2 States in the manner described in Paragraph 5(a); Settling Defendant shall be disbursed any
3 balance of the escrow account. The dispute resolution procedures set forth in this Paragraph in
4 conjunction with the procedures set forth in Section VI (Dispute Resolution) shall be the
5 exclusive mechanisms for resolving disputes regarding the Settling Defendant's obligation to
6 reimburse the United States for its Future Response Costs.
7

8 **VI. DISPUTE RESOLUTION**

9
10 6. Unless otherwise expressly provided for in this Consent Decree, the dispute
11 resolution procedures of this Section shall be the exclusive mechanism to resolve disputes
12 arising under or with respect to this Consent Decree. However, the procedures set forth in this
13 Section shall not apply to actions by the United States to enforce obligations of the Settling
14 Defendant that have not been disputed in accordance with this Section.
15

16 7. Informal Dispute Resolution. Any dispute which arises under or with respect to this
17 Consent Decree shall in the first instance be the subject of informal negotiations between the
18 Parties to the dispute. The period for informal negotiations shall not exceed 20 days from the
19 time the dispute arises, unless it is modified by written agreement of the Parties to the dispute.
20 The dispute shall be considered to have arisen when one Party sends the other Party a written
21 Notice of Dispute.
22

23 8. Formal Dispute Resolution.

24 a. In the event that the Parties cannot resolve a dispute by informal negotiations
25 under the preceding Paragraph, then the position advanced by EPA shall be considered binding
26 unless, within 30 days after the conclusion of the informal negotiation period, Settling
27 Defendant invokes the formal dispute resolution procedures of this Section by serving on the
28

1 United States a written Statement of Position on the matter in dispute, including, but not
2 limited to, any factual data, analysis or opinion supporting that position and any supporting
3 documentation relied upon by the Settling Defendant.

4
5 b. Within 30 days after receipt of Settling Defendant's Statement of Position,
6 EPA will serve on Settling Defendant its Statement of Position, including, but not limited to,
7 any factual data, analysis, or opinion supporting that position and all supporting documentation
8 relied upon by EPA. Within 10 days after receipt of EPA's Statement of Position, Settling
9 Defendant may submit a Reply.

10
11 c. Following receipt of Settling Defendant's Statement of Position submitted
12 pursuant to Paragraph 8, the Director of the Superfund Division, EPA Region 9, will issue a
13 final decision resolving the dispute. The Superfund Division Director's decision shall be
14 binding on the Settling Defendant unless, within 10 days of receipt of the decision, the Settling
15 Defendant files with the Court and serves on the United States a motion for judicial review of
16 the decision setting forth the matter in dispute, the efforts made by the Parties to resolve it,
17 and the relief requested. The United States may file a response to Settling Defendant's
18 motion.
19

20 9. The invocation of formal dispute resolution procedures under this Section shall not
21 extend, postpone or affect in any way any obligation of the Settling Defendant under this
22 Consent Decree not directly in dispute, unless EPA or the Court agrees otherwise. Stipulated
23 penalties with respect to the disputed matter shall continue to accrue but payment shall be
24 stayed pending resolution of the dispute as provided in Paragraph 15. Notwithstanding the stay
25 of payment, stipulated penalties shall accrue from the first day of noncompliance with any
26 applicable provision of this Consent Decree. In the event that the Settling Defendant does not
27
28

prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Paragraph 11 (Stipulated Penalties).

VII. FAILURE TO COMPLY WITH REQUIREMENTS OF CONSENT DECREE

10. Interest on Late Payments.

a. In the event that the payment required by Paragraph 4 is not made within 30 days of the Effective Date of this Consent Decree or the payments required by Paragraph 5(a) are not made within 30 days of the Settling Defendant's receipt of the bill, Settling Defendant shall pay Interest on the unpaid balance. The Interest to be paid on Past Response Costs under this Paragraph shall begin to accrue upon lodging of this Consent Decree. The Interest on Future Response Costs shall begin to accrue on the date of the bill. The Interest shall accrue through the date of Settling Defendant's payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to Plaintiffs by virtue of Settling Defendant's failure to make timely payments under this Section.

b. In the event that any payment required by Section VII, Paragraph 11 (Stipulated Penalties) are not received when due, Interest shall continue to accrue on the unpaid balance through the date of payment.

11. Stipulated Penalties.

a. Stipulated Penalty for Late Payment. In the event that any payment required by Section V (Reimbursement of Response Costs) is not received when due, Settling Defendant shall pay to EPA as a stipulated penalty, in addition to the Interest required by Paragraph 10:

<u>Penalty per Violation per Day</u>	<u>Period of Noncompliance</u>
\$1,000	1st through 14th day
\$2,000	15th through 30th day
\$5,000	31st day and beyond

1 b. Stipulated Penalty for Other Non-Compliance. If Settling Defendant does
2 not comply with Section XI (Site Access) or Section XII (Access to Information), Settling
3 Defendant shall pay to EPA as a stipulated penalty \$500 per violation per day of such non-
4 compliance.

5
6 c. Stipulated penalties are due and payable within 30 days of the date of the
7 demand for payment of the penalties by EPA. All payments under this Paragraph shall be
8 made by certified or cashier's check made payable to "EPA Hazardous Substance Superfund"
9 and shall be sent to:

10
11 U.S. EPA
12 Region IX
13 Attn: Superfund Accounting
P. O. Box 360863M
Pittsburgh, PA 15251.

14 All payments shall indicate that the payment is for stipulated penalties and shall reference the
15 name and address of the Party making payment, the EPA Region and Site ID Number 09-D7
16 and DOJ Case Number 90-11-3-06062. Copies of each check paid pursuant to this Paragraph,
17 and any accompanying transmittal letter, shall be sent to the United States as provided in
18 Section XIV (Notices and Submissions).

19
20 d. Penalties shall accrue as provided in this Paragraph regardless of whether
21 EPA has notified Settling Defendant of the violation or made a demand for payment, but need
22 only be paid upon demand. All penalties shall begin to accrue on the day after the day a
23 violation occurs, and shall continue to accrue through the day of the correction of the
24 noncompliance. However, stipulated penalties shall not accrue: (1) with respect to a decision
25 by the Director of the Superfund Division, EPA Region 9, under Paragraph 8(c) of
26 Section VI (Dispute Resolution), during the period, if any, beginning on the 21st day after the
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1 date that Settling Defendants' reply to EPA's Statement of Position is received until the date
2 that the Director issues a final decision regarding such dispute; or (2) with respect to judicial
3 review by this Court of any dispute under Section VI (Dispute Resolution), during the period,
4 if any, beginning on the 31st day after the Court's receipt of the final submission regarding the
5 dispute until the date that the Court issues a final decision regarding such dispute. Nothing
6 herein shall prevent the simultaneous accrual of separate penalties for separate violations of
7 this Consent Decree.
8

9
10 12. If the United States brings an action to enforce this Consent Decree, Settling
11 Defendant shall reimburse the United States for all costs of such action, including but not
12 limited to costs of attorney time.

13 13. Payments made under Paragraphs 10-12 shall be in addition to any other remedies
14 or sanctions available to Plaintiff by virtue of Settling Defendant's failure to comply with the
15 requirements of this Consent Decree.
16

17 14. Notwithstanding any other provision of this Section, the United States may, in its
18 unreviewable discretion, waive payment of any portion of the stipulated penalties that have
19 accrued pursuant to this Consent Decree.

20 15. Penalties shall continue to accrue as provided in Paragraph 11(d) during any
21 dispute resolution period, but need not be paid until the following:
22

23 a. If the dispute is resolved by agreement or by a decision of EPA that is not
24 appealed to this Court, accrued penalties determined to be owing shall be paid to EPA within
25 15 days of the agreement or the receipt of EPA's decision or order;

26 b. If the dispute is appealed to this Court and the United States prevails in
27 whole or in part, Settling Defendant shall pay all accrued penalties determined by the Court to
28

1 be owed to EPA within 60 days of receipt of the Court's decision or order, except as provided
2 in Subparagraph (c) below;

3 c. If the District Court's decision is appealed by any Party, Settling Defendant
4 shall pay all accrued penalties determined by the District Court to be owing to the United
5 States into an interest-bearing escrow account within 60 days of receipt of the Court's decision
6 or order. Penalties shall be paid into this account as they continue to accrue, at least every 60
7 days. Within 15 days of receipt of the final appellate court decision, the escrow agent shall
8 pay the balance of the account to EPA or to Settling Defendant to the extent that they prevail.
9

10 **VIII. COVENANT NOT TO SUE BY PLAINTIFF**

11
12 16. Covenant Not to Sue by United States. Except as specifically provided in
13 Paragraph 17 (Reservation of Rights by United States), the United States covenants not to sue
14 Settling Defendant pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), for recovery
15 of Past Response Costs or Future Response Costs. This covenant not to sue for Past Response
16 Costs shall take effect upon receipt by EPA of all payments required by Paragraph 4 (Payment
17 of Past Response Costs to the EPA Hazardous Substance Superfund) in Section V
18 (Reimbursement of Response Costs) and Section VII, Paragraphs 10 (Interest on Late
19 Payments) and 11 (Stipulated Penalties) with respect to payment of Past Response Costs. This
20 covenant not to sue for Future Response Costs shall take effect upon payment of all Future
21 Response Costs required by Paragraph 5 (Payment of Future Response Costs to the EPA
22 Hazardous Substance Superfund) in Section V (Reimbursement of Response Costs) and Section
23 VII, Paragraphs 10 (Interest on Late Payments) and 11 (Stipulated Penalties) with respect to
24 payment of Future Response Costs. This covenant not to sue is conditioned upon the
25 satisfactory performance by Settling Defendant of its obligations under this Consent Decree.
26
27
28

1 This covenant not to sue extends only to Settling Defendant and does not extend to any other
2 person.

3 17. Reservation of Rights by United States. The covenant not to sue set forth in
4 Paragraph 16 does not pertain to any matters other than those expressly specified therein. The
5 United States reserves, and this Consent Decree is without prejudice to, all rights against
6 Settling Defendant with respect to all other matters, including but not limited to:
7

8 a. liability for failure of Settling Defendant to meet a requirement of this
9 Consent Decree;

10 b. liability for damages for injury to, destruction of, or loss of natural
11 resources, and for the costs of any natural resource damage assessments;

12 c. criminal liability;

13 d. liability for injunctive relief or administrative order enforcement under
14 Section 106 of CERCLA, 42 U.S.C. § 9606; and
15

16 e. liability for costs incurred or to be incurred by the United States that are
17 related to the Site but are not within the definition of Past Response Costs or Future Response
18 Costs.
19

20 18. Notwithstanding any other provision of this Consent Decree, the United States
21 retains all authority and reserves all rights to take any and all response actions authorized by
22 law.
23

24 **IX. COVENANT NOT TO SUE BY SETTLING DEFENDANT**

25 19. Settling Defendant covenants not to sue and agrees not to assert any claims or
26 causes of action against the United States, or its contractors or employees, with respect to Past
27 Response Costs, Future Response Costs, or this Consent Decree, including but not limited to:
28

1 a. any direct or indirect claim for reimbursement from the Hazardous Substance
2 Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§
3 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

4 b. any claim arising out of response actions at the Site; and

5 c. any claim against the United States pursuant to Sections 107 and 113 of
6 CERCLA, 42 U.S.C. §§ 9607 and 9613, related to the Site.
7

8 20. Nothing in this Consent Decree shall be deemed to constitute approval or
9 preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611,
10 or 40 C.F.R. 300.700(d).
11

12 **X. EFFECT OF SETTLEMENT/ CONTRIBUTION PROTECTION**

13 21. Nothing in this Consent Decree shall be construed to create any rights in, or grant
14 any cause of action to, any person not a Party to this Consent Decree. Each of the Parties
15 expressly reserves any and all rights (including, but not limited to, any right to contribution),
16 defenses, claims, demands, and causes of action which each Party may have with respect to
17 any matter, transaction, or occurrence relating in any way to the Site against any person not a
18 Party hereto.
19

20 22. The Parties agree, and by entering this Consent Decree this Court finds, that
21 Settling Defendant is entitled to protection from contribution actions or claims as provided by
22 Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), for "matters addressed" in this
23 Consent Decree. The "matters addressed" in this Consent Decree are Past Response Costs and
24 Future Response Costs.
25

26 23. Settling Defendant agrees that, with respect to any suit or claim for contribution
27 brought by it for matters related to this Consent Decree, it will notify EPA and DOJ in writing
28

1 no later than 60 days prior to the initiation of such suit or claim. Settling Defendant also
2 agrees that, with respect to any suit or claim for contribution brought against it for matters
3 related to this Consent Decree, it will notify EPA and DOJ in writing within 10 days of service
4 of the complaint or claim upon it. In addition, Settling Defendant shall notify EPA and DOJ
5 within 10 days of service or receipt of any Motion for Summary Judgment, and within 10 days
6 of receipt of any order from a court setting a case for trial, for matters related to this Consent
7 Decree.
8

9
10 24. In any subsequent administrative or judicial proceeding initiated by the United
11 States for injunctive relief, recovery of response costs, or other relief relating to the Site,
12 Settling Defendant shall not assert, and may not maintain, any defense or claim based upon the
13 principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other
14 defenses based upon any contention that the claims raised by the United States in the
15 subsequent proceeding were or should have been brought in the instant case; provided,
16 however, that nothing in this Paragraph affects the enforceability of the Covenant Not to Sue
17 by Plaintiff set forth in Section VIII.
18

19 XI. SITE ACCESS

20 25. Commencing upon the date of lodging of this Consent Decree, Settling Defendant
21 agrees to provide the United States and its representatives, including EPA and its contractors,
22 access at all reasonable times to the Site for the purpose of conducting any response activity
23 related to the Site, including but not limited to:
24

- 25 a. Monitoring of investigation, removal, remedial or other activities at the Site;
- 26 b. Verifying any data or information submitted to the United States;
- 27 c. Conducting investigations relating to contamination at or near the Site;
- 28

- 1 d. Obtaining samples;
- 2 e. Assessing the need for, planning, or implementing response actions at or
- 3 near the Site; and
- 4
- 5 f. Inspecting and copying records, operating logs, contracts, or other
- 6 documents maintained or generated by Settling Defendant or its agents, consistent with Section
- 7 XII (Access to Information).

8 26. Notwithstanding any provision of this Consent Decree, the United States retains all

9 of its access authorities and rights, including enforcement authorities related thereto, under

10 CERCLA, the Resource Conservation and Recovery Act, 42 U.S.C. § 6927, and any other

11 applicable statutes or regulations.

12

13 27. Notice to Successors-in-Title

14 a. With respect to the property owned or controlled by the Settling Defendant

15 that is located within the Site, within 15 days after the entry of this Consent Decree, the

16 Settling Defendant shall submit to EPA for review and approval a notice to be filed with the

17 Tulare County Assessor and County Recorder's Office in the State of California, which shall

18 provide notice to all successors-in-title that the property is part of the Site, and that EPA

19 selected a remedy for the Site on the date of the ROD. Such notice shall identify the United

20 States District Court in which the Consent Decree was filed, the name and civil action number

21 of this case, and the date the Consent Decree was entered by the Court. The Settling

22 Defendant shall record the notice within 10 days of EPA's approval of the notice. The Settling

23 Defendant shall provide EPA with a certified copy of the recorded notice within 10 days of

24 recording such notice.

25

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27 b. At least 30 days prior to the conveyance of any interest in property located

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1 within the Site including, but not limited to, fee interests, leasehold interests, and mortgage
2 interests, the Settling Defendant conveying the interest shall give the grantee written notice of
3 this Consent Decree. At least 30 days prior to such conveyance, the Settling Defendant shall
4 also give written notice to EPA and the State of the proposed conveyance, including the name
5 and address of the grantee, and the date on which notice of the Consent Decree was given to
6 the grantee.
7

8 c. In the event of any such conveyance, the Settling Defendant's obligations
9 under this Consent Decree, including, but not limited to, its obligation to provide access
10 pursuant to this Consent Decree, shall continue to be met by the Settling Defendant. In no
11 event shall the conveyance release or otherwise affect the liability of the Settling Defendant to
12 comply with all provisions of this Consent Decree, absent the prior written consent of EPA.
13

14 XII. ACCESS TO INFORMATION

15 28. Settling Defendant shall provide to EPA, upon request, copies of all documents
16 and information within its possession or control or that of its contractors or agents relating to
17 activities at the Site including, but not limited to, sampling, analysis, chain of custody records,
18 manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other
19 documents or information related to the Site.
20

21 29. Confidential Business Information and Privileged Documents.

22 a. Settling Defendant may assert business confidentiality claims covering part
23 or all of the documents or information submitted to Plaintiff under this Consent Decree to the
24 extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. §
25 9604(e)(7), and 40 C.F.R. 2.203(b). Documents or information determined to be confidential
26 by EPA will be accorded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim
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1 of confidentiality accompanies documents or information when they are submitted to EPA, or
2 if EPA has notified Settling Defendant that the documents or information are not confidential
3 under the standards of Section 104(e)(7) of CERCLA, the public may be given access to such
4 documents or information without further notice to Settling Defendant.
5

6 b. Settling Defendant may assert that certain documents, records or other
7 information are privileged under the attorney-client privilege or any other privilege recognized
8 by federal law. If Settling Defendant asserts such a privilege in lieu of providing documents, it
9 shall provide Plaintiff with the following: 1) the title of the document, record, or information;
10 2) the date of the document, record, or information; 3) the name and title of the author of the
11 document, record, or information; 4) the name and title of each addressee and recipient; 5) a
12 description of the subject of the document, record, or information; and 6) the privilege
13 asserted. However, no documents, reports or other information created or generated pursuant
14 to the requirements of this or any other consent decree with the United States shall be withheld
15 on the grounds that they are privileged. If a claim of privilege applies only to a portion of a
16 document, the document shall be provided to Plaintiff in redacted form to mask the privileged
17 information only. Settling Defendant shall retain all records and documents that they claim to
18 be privileged until the United States has had a reasonable opportunity to dispute the privilege
19 claim and any such dispute has been resolved in the Settling Defendant's favor.
20
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22 30. No claim of confidentiality shall be made with respect to any data, including but
23 not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or
24 engineering data, or any other documents or information evidencing conditions at or around
25 the Site.
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XIII. RETENTION OF RECORDS

31. Until 5 years after the entry of this Consent Decree, Settling Defendant shall preserve and retain all records and documents now in its possession or control, or which come into its possession or control, that relate in any manner to response actions taken at the Site or the liability of any person for response actions conducted and to be conducted at the Site, regardless of any corporate retention policy to the contrary.

32. After the conclusion of the document retention period in the preceding paragraph, Settling Defendant shall notify EPA and DOJ at least 90 days prior to the destruction of any such records or documents, and, upon written request by EPA or DOJ, Settling Defendant shall deliver any such records or documents to EPA. Settling Defendant may assert that certain documents, records, or other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Defendant asserts such a privilege, it shall provide Plaintiff with the following: 1) the title of the document, record, or information; 2) the date of the document, record, or information; 3) the name and title of the author of the document, record, or information; 4) the name and title of each addressee and recipient; 5) a description of the subject of the document, record, or information; and 6) the privilege asserted. However, no documents, reports, or other information created or generated pursuant to the requirements of this or any other consent decree with the United States shall be withheld on the grounds that they are privileged. If a claim of privilege applies only to a portion of a document, the document shall be provided to Plaintiff in redacted form to mask the privileged information only. Settling Defendant shall retain all records and documents that it claims to be privileged until the United States has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in the Settling Defendant's favor.

1 33. By signing this Consent Decree, Settling Defendant certifies that, to the best of its
2 knowledge and belief, it has:

3 a. not altered, mutilated, discarded, destroyed or otherwise disposed of any
4 records, documents or other information relating to its potential liability regarding the Site,
5 after notification of potential liability or the filing of a suit against the Settling Defendant
6 regarding the Site; and
7

8 b. fully complied with any and all EPA requests for information regarding the
9 Site pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e).
10

11 **XIV. NOTICES AND SUBMISSIONS**

12 34. Whenever, under the terms of this Consent Decree, notice is required to be given
13 or a document is required to be sent by one Party to another, it shall be directed to the
14 individuals at the addresses specified below, unless those individuals or their successors give
15 notice of a change to the other Parties in writing. Written notice as specified herein shall
16 constitute complete satisfaction of any written notice requirement of the Consent Decree with
17 respect to the United States, EPA, DOJ, and Settling Defendant, respectively.
18

19 As to the United States:

20 As to DOJ:

21 Chief, Environmental Enforcement Section
22 Environment and Natural Resources Division
23 Re: DJ # 90-11-3-06062
24 U.S. Department of Justice
25 P.O. Box 7611
26 Washington, D.C. 20044-7611
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1 withhold its consent if the comments regarding the Consent Decree disclose facts or
2 considerations which indicate that this Consent Decree is inappropriate, improper, or
3 inadequate. Settling Defendant consents to the entry of this Consent Decree without further
4 notice.
5

6 38. If for any reason this Court should decline to approve this Consent Decree in the
7 form presented, this agreement is voidable at the sole discretion of any Party and the terms of
8 the agreement may not be used as evidence in any litigation between the Parties.
9

10 **XVIII. EFFECTIVE DATE**

11 39. The effective date of this Consent Decree shall be the date upon which it is entered
12 by the Court.

13 **XIX. SIGNATORIES/SERVICE**

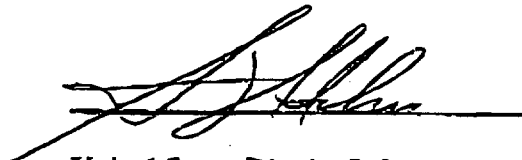
14 40. The undersigned representative of Settling Defendant and the Chief of the
15 Environmental Enforcement Section, Environment and Natural Resources Division of the
16 United States Department of Justice certifies that he or she is authorized to enter into the terms
17 and conditions of this Consent Decree and to execute and bind legally such Party to this
18 document.
19

20 41. Settling Defendant hereby agrees not to oppose entry of this Consent Decree by
21 this Court or to challenge any provision of this Consent Decree, unless the United States has
22 notified Settling Defendant in writing that it no longer supports entry of the Consent Decree.
23

24 42. Settling Defendant shall identify, on the attached signature page, the name and
25 address of an agent who is authorized to accept service of process by mail on its behalf with
26 respect to all matters arising under or relating to this Consent Decree. Settling Defendant
27 hereby agrees to accept service in that manner and to waive the formal service requirements set
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1 forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this
2 Court, including but not limited to, service of a summons.
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6 SO ORDERED THIS 22nd DAY OF February, 1999.


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10 United States District Judge
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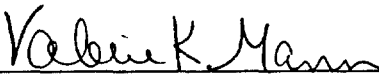
1 THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States
2 v. Southern California Edison Company, Civil Action number F-98-5595, relating to the
3 Southern California Edison Visalia Poleyard Superfund Site.
4

6 FOR THE UNITED STATES OF AMERICA

8 Date: Nov. 20, 1997


JOEL M. GROSS
Chief, Environmental Enforcement Section
Environment and Natural Resources
Division
P.O. Box 7611
U.S. Department of Justice
Washington, D.C. 20044-7611

14 Date: Nov. 18, 1998


VALERIE K. MANN
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, DC 20044-7611

21 PAUL L. SEAVE
United States Attorney

23 Date: _____

24 By: E. ROBERT WRIGHT
Assistant United States Attorney
Eastern District of California
Federal Building Room 3654
1130 "O" Street
Fresno, CA 93721

1 Date: 12-10-98

Keith Takata

Keith Takata
Director, Superfund Division
U.S. Environmental Protection Agency, Region 9
75 Hawthorne Street
San Francisco, CA 94105-3901

5
6 Date: 12/7/98

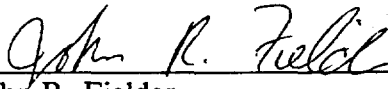


Gregory Lind
Office of Regional Counsel
U.S. Environmental Protection Agency
75 Hawthorne Street
San Francisco, CA 94105-3901

1 THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States
2 v. Southern California Edison Company, Civil Action number F-98-5595, relating to the
3 Southern California Edison Visalia Poleyard Superfund Site.
4

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6
7 FOR DEFENDANT SOUTHERN CALIFORNIA EDISON COMPANY
8
9

10 Date: Nov 13, 1998

11 
12 John R. Fielder
13 Vice President
14 Southern California Edison Co.
15 2244 Walnut Grove Ave.
16 Rosemead, CA 91770

17 Agent Authorized to Accept Service on Behalf of Southern California Edison Company:

18 Vicki Kaiser
19 Registered Agent
20 Southern California Edison Co.
21 2244 Walnut Grove Ave.
22 Rosemead, CA 91770
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